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11 September 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Federal Employees Pay Act

1. For a number of years, one of the Agency's legislation objectives has been to obtain a statutory exclusion from the Federal Pay Act of 1945. That Act, now codified in section 5541 of Title V, deals with overtime, night, and holiday pay.

2. Background. The Civil Service Commission has, by administrative regulations, excluded the Agency from the application of the 1945 Act, but the General Counsel is not comforted by this fact or the fact that the general authorities of the Agency were enacted subsequent to the 1945 Act. Simply put, the General Counsel is wary of a court test over Agency premium pay policies.

3. In 1966, the Civil Service Commission and the Office of Management and Budget (then the Bureau of the Budget) cleared Agency sponsored legislation to specifically exempt the Agency from the Federal Employees Pay Act and Agency witnesses testified on behalf of the legislation before the House Armed Services Committee. The lack of favorable action was without prejudice. Staff personnel of the House Post Office and Civil Service Committee have had a favorable attitude towards such "clarifying" legislation in the past.

4. Our courses of action are:

(1) to insert the needed amendment as a miscellaneous item in our retirement act amendments which we will be submitting to Congress and the Armed Services Committees in the 93rd Congress (the probable success of this tactic should be reviewed with Slatinshek or Braswell since we have not been successful in our previous efforts to do just this), or--

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(2) determine if the Civil Service Commission would be willing to sponsor an amendment as a miscellaneous item in one of the numerous bills they will be submitting to the 93rd Congress. (This most probably would involve Ray Jacobson, Director of the Bureau of Policies and Standards. I have been in contact with a member of the General Counsel, Civil Service Commission, who has identified Frank Witham as a good contact for this purpose.)

The attached one-pager sets for the specific statutory language needed and a rationale. Alternative language could quite likely be developed around the growing Government-wide interest in varying the standard work week, such as four ten-hour days. This latter approach would have the added advantage of masking our interest.

5. The attached has been given to [REDACTED] OGC, and he will discuss it with [REDACTED] in the interest of determining who does what, why, where, and when.

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Assistant Legislative Counsel

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PROPOSED CLARIFYING AMENDMENT
TO TITLE V, U. S. CODE

SEC. _____. Section 5541 is amended by striking out "or" immediately preceding "(xiii)" and by inserting before the period at the end of that subsection "; or (xiv) employees of the Central Intelligence Agency".

The above amendment would further amend the Federal Employees Pay Act of 1945, as amended, specifically to exempt the Central Intelligence Agency from the overtime, night, and holiday pay provisions generally applicable to Federal white-collar employees. The purpose of this amendment is to clarify the authority of the Director of Central Intelligence to deviate somewhat from the specific practices required by that act to take care of peculiar problems inherent in the operation of his agency.

Under section 8 (formerly 10) of the Central Intelligence Agency Act of 1949, as amended, the Director is given broad general authority to expend funds without regard to the laws and regulations relating to the expenditure of Government funds. Exemption of the Central Intelligence Agency from the Commission's regulations under the 1945 pay act is based on the provisions of that section. It is the objective of this amendment to further clarify the administrative authority of the Director in this pay area by adding the CIA to the list of exemptions in the act.